

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0239P

Withholding Tax

For the months August and December 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of monthly withholding tax returns for the months of August and December 2003.

The taxpayer is a company located in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the taxpayer was not aware of the filing frequency, and, the error was unintentional. Furthermore, the taxpayer states the taxpayer has a good compliance record.

The Department will waive penalty when the error is unusual and the taxpayer has an exemplary compliance history.

With regard to the payment history, the taxpayer has an earlier error which the taxpayer paid. In light of this error, the Department does not feel the taxpayer has established a good compliance record which would be a factor in waiving penalty.

With regard to the nature of the error, the Department does not feel misinterpreting the filing frequency is an unusual error. Thus, the Department does not feel the nature of the error is a factor in waiving penalty.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the

Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.